

A G R E E M E N T

*Recd in
Loose Ashton
office
12-1-70
via Mr.
Jones*

This agreement made and entered into this _____ day of _____, 1970, by and between the State Road Commission of Utah, hereinafter called the "Road Commission" and Ashton's Inc., doing business as Wasatch Mountain Railway and Development Company, a Utah Company, Heber, Utah, hereinafter called "Ashton's Inc." which agreement shall remain in force until such time as Wasatch Mountain Railway and Development Company formalizes an agreement with the Road Commission to assume the responsibility presently assumed by Ashton's Inc. as stated in the following agreement:

WITNESSETH

WHEREAS, Ashton's Inc. is desirous of transferring locomotives and railroad cars along the Denver and Rio Grande Western Railroad Company, Provo Canyon Branch, which tracks and right of way are presently owned by the Road Commission, between M.P. 6.00 and Heber City, and

WHEREAS, the Road Commission has indicated a willingness to permit said transfer, and

WHEREAS, the transferring of said railroad train before April 1, 1971, will not delay planned construction or unduly hinder the highway user.

NOW THEREFORE, Ashton's Inc. agrees that all transfer of railway apparatus along the Denver and Rio Grande Western Railroad Company, Provo Canyon Branch, will be complete in the section between Olmstead and Wildwood by April 1, 1971, inasmuch as the Road Commission plans to remove the rails

*Reed in
Lower Ashton
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via Mr. Jones*

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WHEREAS, the Road Commission has indicated a willingness to permit said transfer, and

WHEREAS, the transferring of said railroad train before April 1, 1971, will not delay planned construction or unduly hinder the highway user.

NOW THEREFORE, Ashton's Inc. agrees that all transfer of railway apparatus along the Denver and Rio Grande Western Railroad Company, Provo Canyon Branch, will be complete in the section between Olmstead and Wildwood by April 1, 1971, inasmuch as the Road Commission plans to remove the rails

from said railroad line from Olmstead to Wildwood after April 1, 1971; Ashton's Inc. further agrees that it will have no further claim to the use of said railroad from Olmstead to Wildwood after April 1, 1971.

Ashton's Inc. further agrees that all costs incurred in transporting said railway apparatus will be borne by Ashton's Inc. including, but not limited to the cost of repairing railroad track, bridges, transporting costs, repair of highway and any property damage which may be caused in transporting railway apparatus.

Be it further understood that the Road Commission has no knowledge of the condition of the tracks and right of way and does not in any way, by statement or implication, guarantee the condition of said tracks and right of way and its ability to withstand safely the loads or loading of said railroad locomotives, railroad cars, and other apparatus being transferred, and therefore Ashton's Inc. agrees that it is not the responsibility of the Road Commission to perform any work whatsoever on the tracks or right of way prior to the aforementioned transfer nor will the Road Commission be liable for any damages whatsoever which may be caused by the condition of such tracks or right of way.

PROTECTION OF TRAFFIC DURING CONSTRUCTION

Ashton's Inc. shall so conduct its operation that there shall be no interference with or interruption of highway traffic. Ashton's Inc. shall conform to such instructions of the District Engineer as may be given with respect to handling of traffic, and shall at all times maintain such watchmen, barricades, lights or such other measures for the protection of traffic as may be required to warn and safeguard the public against injury or damage during the operation of Ashton's Inc. in operating said line.

RESTORATION OF EXISTING PAVEMENT

Ashton's Inc. shall at its own expense replace any pavement removed or damaged with the same type and depth of pavement as that which is adjoining, including gravel base material. This restoration shall be accomplished within two weeks from the time of excavation, unless additional time is granted in writing by the District Engineer of the State Road Commission. Restoration shall be substantially to the same condition as prior to Ashton's Inc. undertaking of the work.

DISPOSAL OF SURPLUS MATERIAL IN CLEANING UP HIGHWAY

Upon completion of the work, all surplus material shall be removed from within the limit of the highway. The disturbed surface shall be carefully graded to the lines and grades established. Any highway facilities such as signs, culverts, etc., disturbed or damaged during the progress of the work shall be properly restored to their original condition within a reasonable time.

AGREEMENT NOT TO BE ASSIGNED

Ashton's Inc. shall not assign this agreement or any interest therein without the written consent of the Road Commission.

SUCCESSORS AND ASSIGNS

All covenants and agreements herein contained shall be binding upon the parties hereto, their successors and assigns.

LIABILITY

Ashton's Inc. agrees to post a bond with the Road Commission's District Engineer's office in the amount of \$50,000.00 to remain in force during any

operation on the Road Commission's right of way, to guarantee satisfactory performance as provided in this agreement. The Road Commission may proceed against said bond to recover for all expenses incurred by the Road Commission, their employees or representatives, in bringing the sections of roadway interfered with by Ashton's Inc. to the standards required by the Road Commission including attorney fees connected in anywise with the matter and things contained herein. These expenses specifically refer to all expense incurred in repairing portions of the roadway determined by Road Commission inspectors to be inadequately restored or maintained by Ashton's Inc.

In addition, Ashton's Inc. shall at all times protect and indemnify and save harmless the Road Commission from any and all claims, demands, judgments, costs, expenses and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of injury to or death of any person, or damage to property of any person or persons whomsoever, including the parties hereto and their employees, or in any manner arising from or growing out of the construction, maintenance, operation, repair, extension, existence, use or removal of said Ashton's Inc., or the failure to properly construct, operate, maintain, or remove the same, including any insecurity of the surface caused by the construction or use of said Ashton's Inc. operation and from all costs and expenses. For this purpose Ashton's Inc. shall obtain a policy of liability insurance acceptable to the Road Commission as explained elsewhere in this agreement and is shown as the Railroad Protective Liability Form.

IN WITNESS WHEREOF, The Road Commission and Ashton's Inc. have caused these presents to be signed by their proper officials thereunto duly authorized.

Dated _____, 19____

ON BEHALF OF THE STATE ROAD COMMISSION:

ATTEST:

Secretary

Director of Highways

RECOMMENDED FOR APPROVAL:

APPROVED AS TO FORM:
VERNON B. ROMNEY, ATTORNEY GENERAL

By: _____
District Engineer

By:  _____
Assistant Attorney General

ON BEHALF OF ASHTON'S INC.

WITNESS:

Ashton's Inc.